ORIGINAL

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August 13, 1997

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ameritech Michigan
Dkt. No. 97-137
Notice of Ex Parte Presentation

Dear Mr. Caton:

Pursuant to Section 1.1206 of the Commission's rules, Ameritech Michigan ("Ameritech") hereby submits this notice of oral ex parte presentations in the above-referenced proceeding. On August 12, 1997, representatives of Ameritech met and spoke by telephone with Commission representatives to discuss Ameritech's Section 271 application. In the meetings, Ameritech was represented by Kelly Welsh and Lynn Starr of Ameritech and Antoinette Cook Bush of Skadden, Arps, Slate, Meagher & Flom LLP. They met with Commissioner Quello and Paul Gallant of his office, with Commissioner Chong and Kathy Franco and Tom Zagourski of her office, and with Tom Boasberg of the Chairman's office. In addition, Ms. Bush had a telephone conversation with Regina Keeney of the Common Carrier Bureau. Finally, Ms. Starr and Ms. Bush met again with Mr. Boasberg on August 13, 1997.

In the meetings and telephone calls, Ameritech discussed the merits of its Section 271 application, reiterated positions advanced in its initial and reply briefs, and urged the Commission to approve the application. Ameritech concentrated on two points: (1) in determining whether a 271 application is in the public interest that the express language of Section 271(d)(3)(C) -- "the requested authorization is consistent with the public interest . . ." (emphasis added) -- requires the Commission to focus on the benefits of long distance entry by Ameritech, and (2) that Congress expressly rejected any type of metrics or geographic test for effective local competition as a requirement for approval of a Section 271 application. In connection with

the latter point, Ameritech noted certain portions of the legislative history, particularly the rejection of amendments designed to impose an "effective competition" test. *See* 141 Cong. Rec. S8319, S8321-22 (daily ed. June 14, 1995)(statements of Sens. Kerry and Stevens); 141 Cong. Rec. H8454 (daily ed. August 4, 1995)(statement of Rep. Bunn). In addition, Ameritech stressed the House report, where it was recognized that the Commission need only "determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance." H.R. Rept. No.104-204, 104th Cong., 1st Sess., at 77. Ameritech also referenced the first report and order in the Non-accounting Safeguards proceeding (CC No. 96-149), in paragraph nine of which the Commission acknowledged that "Congress recognized that the local exchange market will not be fully competitive immediately upon its opening." Moreover, Ameritech stated that in rejecting tests measuring either level or scope of competition, Congress recognized that once a BOC complied with the checklist it had done all it could to open its market to competition, and that whether and where a competitor chooses to offer service is entirely within the control of that competitor. Copies of the parts of the legislative history and Commission orders referenced by Ameritech are attached.

Copies of this Notice of Ex Parte Presentation have been provided to the above-referenced Commission representatives, as required by Section 1.1206(a)(2) of the Commission's rules. An original and one copy have been submitted to the Secretary's office.

Respectfully submitted,

Antoinette Cook Bush
Counsel for Ameritech Michigan

cc: Commissioner Quello
Commissioner Chong
Paul Gallant
Kathy Franco
Thomas Zagourski
Thomas Boasberg
Regina Keeney
James Casserly

104TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 104–204
Part 1

COMMUNICATIONS ACT OF 1995

JULY 24, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1555]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1555) to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

92–414

emedy any situation in which a fee
n by expanding the application of their
elecommunications services, including
does not invalidate any general impo-
sh between or among providers of tele-
does it apply to any lawfully imposed

in eighteen (18) months, a LEC to file
that State in which it is offering serv-
d conditions confirming that it is in
242 requirements. Several States have
ECs to open their local exchanges to
3, no State will be allowed to bar such
enactment. While final Federal rules
be available for 15 months, it is the
incumbent LECs and new entrants
and conditions required in the state-
prior to the issuance of Federal rules.
ditions would be have to be modified
to Federal rules.
State commission to ensure that a
with the Federal requirements and
State may impose its own "openness
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effect. Section 244(d) allows a LEC
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ment. The verification must include,
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nts, and under section 245(a)(2), ei-
to section 245(a)(2)(A), the presence
or pursuant to section 245(a)(2)(B),
l conditions the BOC would make
f no provider had requested access
e (3) months prior to the BOC filing

e Commission must determine that
petitor that is providing service to

residential and business subscribers. This is the integral requirement of the checklist, in that it is the tangible affirmation that the local exchange is indeed open to competition. In the Committee's view, the "openness and accessibility" requirements are truly validated only when an entity offers a competitive local service in reliance on those requirements.

The Committee requires that the service be made available to both residential and business subscribers, so that the service is, in fact, local telephone exchange service. It is not sufficient for a competitor to offer exchange access service to business customers only, as presently offered by competitive access providers (CAPs) in the business community. The Committee does not intend for cellular service to qualify, since the Commission has not determined that cellular is a substitute for local telephone service.

The Committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance. The requirement of an operational competitor is crucial because, under the terms of section 244, whatever agreement the competitor is operating under must be made generally available throughout the State. Any carrier in another part of the State could immediately take advantage of the "agreement" and be operational fairly quickly. By creating this potential for competitive alternatives to flourish rapidly throughout a State, with an absolute minimum of lengthy and contentious negotiations once an initial agreement is entered into, the Committee is satisfied that the "openness and accessibility" requirements have been met.

It is also the Committee's intent that the competitor offer a true "dialtone" alternative within the State, and not merely offer service in one business location that has an incidental, insignificant residential presence. The Committee does not intend that the competitor should have to provide a fully redundant facilities-based network to the incumbent telephone company's network, yet it is expected that the facilities necessary for a competitive provider will be present. In this regard, the Committee notes that the cable industry, which is expected to provide meaningful facilities-based competition, has wired 95% of the local residences in the United States and thus has a network with the potential of offering this sort of competitive alternative. Conversely, resale, as described in section 242(a)(3), would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test.

Section 245(a)(2)(B) is intended to ensure that a BOC is not effectively prevented from seeking entry into the long distance market simply because no facilities-based competitor which meets the criteria specified in the Act sought to enter the market. To the extent that a BOC does not receive a request from a competitor that comports with the criteria established by this section, it is not penalized in terms of its ability to obtain long distance relief. Because negotiating for access and interconnection may begin on the date of enactment, and in many of these States that have opened their local exchanges to competition, such negotiations have already begun, the Committee believes that it does not create an unreason-

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended.	)	CC Docket No. 96-149

FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: December 23, 1996 **Released: December 24, 1996**

Comment Date: February 19, 1997
Reply Comment Date: March 21, 1997

By the Commission:

TABLE OF CONTENTS

A. Background

7. The fundamental objective of the 1996 Act is to bring to consumers of telecommunications services in all markets the full benefits of vigorous competition. As we recognized in the First Interconnection Order, "[t]he opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring new packages of services, lower prices, and increased innovation to American consumers."[17] With the removal of legal, economic, and regulatory impediments to entry, providers of various telecommunications services will be able to enter each other's markets and provide various services in competition with one another. Both the BOCs and other firms, most notably existing interexchange carriers, will be able to offer a widely recognized brand name that is associated with telecommunications services. As firms expand the scope of their existing operations to new product lines, they will increasingly offer consumers the ability to purchase local, intraLATA, and interLATA telecommunications services, as well as wireless, information, and other services, from a single provider (i.e., "one stop shopping"), and other advantages of vertical integration.[18]

8. The 1996 Act opens local markets to competing providers by imposing new interconnection and unbundling obligations on existing providers of local exchange service, including the BOCs. The 1996 Act also allows the BOCs to provide interLATA services in the states where they currently provide local exchange and exchange access services once they satisfy the requirements of section 271. Moreover, by requiring compliance with the competitive checklist set out in section 271(c)(2)(B) as a prerequisite to BOC provision of in-region interLATA service, the statute links the effective opening of competition in the local market with the timing of BOC entry into the long distance market, so as to ensure that neither the BOCs nor the existing interexchange carriers could enjoy an advantage from being the first to enter the other's market.

9. In enacting section 272, Congress recognized that the local exchange market will not be fully competitive immediately upon its opening. Congress, therefore, imposed in section 272 a series of separate affiliate requirements applicable to the BOCs' provision of certain new services and their engagement in certain new activities. These requirements are designed, in the absence of full competition in the local exchange marketplace, to prohibit anticompetitive discrimination and cost-shifting, while still giving consumers the benefit of competition.

10. As we observed in the Notice, BOC entry into in-region interLATA services raises issues for competition and consumers, even after a BOC has satisfied the requirements of section

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[17] First Interconnection Order at ¶ 4.

[18] There are economies of scope where it is less costly for a single firm to produce a bundle of goods or services together, than it is for two or more firms, each specializing in distinct product lines, to produce them separately. See, e.g., John C. Panzar and Robert D. Willig, Economies of Scope, 71 Am. Econ. Rev. of Papers and Proc. 268 (1981); William J. Baumol, John C. Panzar, and Robert D. Willig, Contestable Markets and the Theory of Industry Structure 71-79 (1982); Daniel F. Spulber, Regulation and Markets 114-15 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended	)	CC Docket No. 96-149

Second Order on Reconsideration

Adopted: June 20, 1997 Released: June 24, 1997

By the Commission:

Table of Contents

I. INTRODUCTION AND SUMMARY

1. In the *Non-Accounting Safeguards First Report and Order*, released on December 24, 1996, the Commission implemented the non-accounting safeguards provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996

services on an end-to-end physically integrated basis that gives rise to the concerns that separate affiliate requirements are intended to address. Our original interpretation of section 272(e)(4) preserves this essential prohibition, while the BOCs' interpretation, under which section 272(e)(4) is a grant of authority, eviscerates it. Our interpretation is bolstered by our view that it is exceedingly unlikely that Congress would have tucked away a fundamental grant of authority in section 272(e), which imposes obligations on the BOCs in response to requests from unaffiliated carriers. The thrust of section 272 is likewise to limit, not expand, BOC authority.

II. STATUTORY FRAMEWORK

4. BOC entry into the in-region interLATA services market is governed by sections 271 and 272 of the Communications Act. Section 271(a) states that neither a BOC nor an affiliate "may provide interLATA services except as provided in this section."[3] Section 271(b) grants immediate authorization to a BOC or its affiliate to provide interLATA services originating outside of the BOC's in-region states ("out-of-region" interLATA services) and to provide six specified "incidental" interLATA services.[4] Section 271(f) explains that the prohibition in section 271(a) does not apply to any activities "previously authorized" by the court that administered the AT&T Consent Decree.[5]

5. With respect to interLATA services originating within a BOC's in-region states ("in-region" interLATA services), 271(b) does not authorize immediate entry. Specifically, section 271(b)(1) states that a BOC or its affiliate may provide in-region interLATA services originating in a particular state if, and only if, the Commission formally approves the provision of such services pursuant to section 271(d)(3).[6] Section 271(d)(3) approval for a particular state is generally designed to ensure that the BOC has taken sufficient steps to open its local exchange network in that state to competition.[7] As explained in the *Non-Accounting Safeguards First Report and Order*, Congress recognized that section 271(d)(3) approval might be granted in a particular state before the local exchange market in that state became fully competitive.[8] Congress thus enacted section 272 to respond to the concerns about anticompetitive discrimination and cost-shifting that arise when a BOC enters the interLATA

[3] *Id.* § 271(a).

[4] *Id.* § 271(b)(2) (out-of-region interLATA services); *id.* § 271(b)(3) (incidental interLATA services).

[5] *Id.* § 271(f). As amended by the Telecommunications Act of 1996, the Communications Act defines "AT&T Consent Decree" to refer to the MFJ and all subsequent judgments or orders related to the MFJ. *Id.* § 153(3).

[6] *See id.* § 271(b)(1).

[7] *See id.* § 271(d)(3)(A) (generally requiring a facilities-based competitor and satisfaction of a competitive checklist).

[8] *See Non-Accounting Safeguards First Report and Order*, para. 9.

services market in an in-region state in which the local exchange market is not yet fully competitive.[9] As reflected in the title of section 272 ("Separate Affiliate; Safeguards"), Congress chose to respond to these concerns through the structural requirement of a separate affiliate. Thus, section 272(a)(1) provides that "[a] Bell operating company (including any affiliate) . . . may not provide any service described in [section 272(a)(2)] unless it provides that service through one or more [separate] affiliates" that operate independently of the BOC.[10]

6. Section 272(a)(2) lists three kinds of services for which a separate affiliate is required: (a) manufacturing services, (b) "[o]rigination of interLATA telecommunications services" other than out-of-region services, previously authorized services, and all but one of the six incidental services,[11] and (c) "[i]nterLATA information services" other than electronic publishing services and alarm monitoring services.[12] Thus, section 272(a)(2) requires a separate affiliate for the origination of all but three kinds of interLATA telecommunications services (out-of-region services, previously authorized services, and most incidental services) and all but two kinds of interLATA information services (electronic publishing services and alarm monitoring services).

7. As a general matter, the other provisions in section 272 define more precisely how structurally separate the BOC and its section 272 interLATA affiliate must be, and the terms of any relationship between the two. With regards to structural separation, the most significant provisions in section 272 are section 272(b)(1), which requires the separate affiliate to "operate independently from the [BOC],"[13] section 272(b)(2), which requires it to keep "separate" books of account,[14] and section 272(b)(3), which requires it to have "separate officers, directors, and employees."[15] With regard to the relationship between the BOC and its structurally separate affiliate, the most significant provisions are section 272(b)(5), which requires that any dealings between the two be conducted "on an arm's length basis," "reduced

[9] *See id.*

[10] 47 U.S.C. § 272(a)(1).

[11] The one incidental service for which a separate affiliate is required is described in section 272(g)(4). *See id.* § 271(g)(4) (describing incidental service that permits a customer located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of a BOC or its affiliate that are located in another LATA).

[12] *Id.* § 272(a)(2). Electronic publishing has its own distinct structural separation requirements. *See id.* §274.

[13] *Id.* § 272(b)(1).

[14] *Id.* § 272(b)(2).

[15] *Id.* § 272(b)(3).

pass a law that would [illegible] ogy. We should be [illegible] reaping the benefits of this exciting new technology.

The Bliley-Fields amendment is a harness that maintains old monopolies, and stifles real competition.

H.R. 1555 is also a bad deal for consumers. It is estimated that since we passed the Cable Act in the 102d Congress, consumers have saved more than $3 billion. This bill would gut those provisions and deregulate an industry where no real competition exists.

I urge you to think about your constituednts as they answer their phones, sign on to their computers, turn on their televisions, and open their cable bills. If we rush pass H.R. 1555, our constituents may start thinking negatively about us when they do these things. Vote no on this tax increase, vote "no" on Bliley-Fields.

Mr. BLILEY. Mr. Chairman, I yield 1 minute to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, I commented more extensively on the manager's amendment in the debate in chief on the general debate, so I will not repeat that now, except to say I do support the manager's amendment. I think it has tied up a lot of loose ends and makes the entire telecommunications field more competitive.

The purpose of the entire legislation was really to enhance competition, because that certainly helps the consumer, facilitates development of all these various industries, and benefits the country and the economy at large. Given the complexity of this legislation, this manager's amendment goes a long way toward resolving that.

The Committee on the Judiciary met with the staff of the gentleman from Virginia [Mr. BLILEY] and resolved many controversies, so I am pleased to support the manager's amendment.

Mr. BRYANT of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. BUNN].

Mr. BUNN of Oregon. Mr. Chairman, this bill has a lot of good things in it, but one it does not have is increased competition.

In a real effort to provide more competition, I offered an amendment that simply said that a Bell Co. has to have at least the availability of 10 percent of the customers going to a competitor, not that 10 percent have to be signed up for competition, but that 10 percent have to be able to sign up for competition. That was ruled out of order to protect the manager's amendment.

Mr. Chairman, the manager's amendment goes a long way to shut down realistic competition. If the manager's amendment passes, consumers lose. We need to reject the manager's amendment, go back to the language that came out of the committee or ensure that we put in language that would allow real competition, ensuring that at least 10 percent of the customers have the ability to ask for service from a competitor.

Mr. Chairman, I do not think 10 percent is unreasonable. However, I think the manager's amendment is very unreasonable, and I would urge a "no" vote.

Mr. BRYANT of Texas. Mr. Chairman, I yield 1½ minutes to the gentleman from New York [Mr. FORBES].

Mr. FORBES. Mr. Chairman, I thank my colleague from Texas [Mr. BRYANT], and rise in reluctant opposition to the manager's amendment.

The process that brought this manager's amendment to the House floor today has been sorely compromised and will result in a bill that, I believe, will raise more questions than answers. My key concern with process rests in the manager's amendment that is before us.

As we all know, the Commerce Committee reported out H.R. 1555 by a consensus-demonstrating vote of 38 to 5. Before that, the Subcommittee on Telecommunications and Finance reported the legislation after lengthy debate, and previously in this Congress, after many hearings, and in Congresses before, other numerous hearings related to the telecommunications reform measures before us today.

While no one was completely pleased with the bill that was reported out originally by the committee, the committee did produce a balanced bill. That is what happens when you hold public hearings and public markups. It is the way the process is supposed to work in this House.

But what we have before us today, Mr. Chairman, is a manager's amendment that is 60 pages long, with 42 different changes from what the committee reported out.

Mr. Chairman, we are being asked to vote on this amendment and adopt it practically sight unseen. If the changes made in this 60-page manager's amendment are so important, why was not this amendment returned to the Commerce Committee and to the Committee on the Judiciary for their approval before going to the floor?

Mr. Chairman, I vote a "no" vote on the manager's amendment.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BOUCHER] for an enlightened discourse on this matter, and I have been looking forward very much to hearing from the friends of the long-distance operators and I am somewhat distressed that I am not going to do so at this time.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the manager's amendment and in support of H.R. 1555 and would like to take this time to engage in a colloquy with the gentleman from Illinois [Mr. HASTERT] with respect to legislation we have crafted concerning the application of the interconnection requirements with respect to small telephone companies, and at this time, I would yield to the gentleman from Illinois [Mr. HASTERT] for that colloquy.

Mr. HASTERT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, as you know, the gentleman from Virginia [Mr. BOUCHER] and I have been working on language to refine an amendment that the gentleman offered at full committee. I would like to ask the gentleman to take a moment to outline the purpose of his original amendment.

Mr. BOUCHER. Mr. Chairman, reclaiming my time, the amendment that I offered at full committee and which was approved on a voice vote was meant to assure that the more than 1,000 smaller rural telephone companies in our Nation would not have to comply immediately with the competitive checklist contained in section 242 of H.R. 1555.

Rural telephone companies were exempted because the interconnection requirements of the checklist would impose stringent technical and economic burdens on rural companies, whose markets are in the near term unlikely to attract competitors.

It was never our intention, however, to shield these companies from competition, and it is in that context that the language the gentleman and I have agreed to is pertinent, and I would yield back to him to explain the amendment we have crafted.

Mr. HASTERT. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, a refinement of the Boucher amendment assures that rural telephone companies defined in H.R. 1555 will be exempted from complying with the competitive checklist until a competitor makes a bona fide request. Once a bona fide request is made, a State is given 120 days to determine whether to terminate the exemption.

States must terminate the exemption if the expanded interconnection request is technically feasible, not unduly economically burdensome, is consistent with certain principles for the preservation of universal service.

Mr. BLILEY. Mr. Chairman, I yield 30 seconds to the gentleman from Illinois [Mr. HASTERT].

(Mr. HASTERT asked and was given permission to revise and extend his remarks.)

Mr. HASTERT. Mr. Chairman, of critical importance here is an understanding shared by the gentleman from Virginia [Mr. BOUCHER] and me that the economic burdens of complying with the competitive checklist fall on the party requesting the interconnection. However, to the extent the rural telephone company economically benefits from the interconnection, the States should offset the costs imposed by the party requesting interconnection.

Furthermore, we want to make clear that while H.R. 1555 provides that the

communication correctly as far as the Senator from Nebraska is concerned. That is precisely what we are trying to avoid. We want to make sure that the checklist is met at a minimum and the public interest provision comes in at that point. The FCC might delay a smaller company if there is another one coming through the process that would provide a greater service in the area involved. I think that the Senator would understand that. But as a practical matter we do not look at size as being determinative of whether or not the Bell company could enter the area and provide service in the interLATA area.

I will be happy to yield.

Mr. KERREY. What the bill does not do, as I read it, is give me at least confidence in the 14-point checklist. What it says is—Mr. President, 255 is the new section. It is actually called section 221 in the bill, but it creates a new section 255 in the 1934 act, and it is called interexchange telecommunications services, but it is the point where we were removing the restrictions that are currently in place.

Currently, a local company cannot do long distance. What this does is says here are the terms and circumstances under which it can do long distance.

We fought the battle yesterday saying that I thought that the test that was in last year's legislation, S. 1822, and I think it was H.R. 3626, the House bill, that the test there was the right one; it had the Department of Justice determine the competition, and when there is no substantial possibility that the monopoly could use their power to impede competition, have at it. Go to it. Let the Department of Justice make that determination.

We lost that battle. Now what I am attempting to do is to say that the language, as I read the current language in the bill it sets specific interLATA interconnection requirements under, whatever it is, (b) of section 255, specific interLATA interconnection requirements. There are two sections, two paragraphs in there that are important. The first one is the general paragraph which this amendment replaces, and the second one is the competitive checklist.

The current general paragraph says a Bell operating company may provide interLATA, do long-distance service, in accordance with this section only if that company has reached an interconnection agreement under section 251 and that agreement provides at a minimum for interconnection that meets the competitive checklist requirements of paragraph 2.

As I read this, what I can do, if I am a Bell company, and let us say I have 50 people applying to go into interconnection, all I have to do is get one of them on line. I could have relatively stable competition. I just do not get into an agreement with them. I wish to get into long distance.

What I am trying to do is to make sure that I have that competitive choice at the local level before permission is granted. And so I do not say in my substitute paragraph that any company is precluded from an interconnection agreement under section 251. It says instead that "a Bell operating company may provide interLATA service in accordance with this section only if that company has reached"—which is in the language here—"only if that company has reached an interconnection agreement under section 251"—all that is the same as the paragraph I am replacing—"with telecommunications carriers." And here is where it differs: "Telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service, including telecommunications carriers capable"—it does not say it is going to preclude anybody. It just has to include "carriers capable of providing a substantial number of business and residential customers with telephone exchange or exchange access service."

It says these agreements shall provide at a *minimum* the competitive checklist which is also in this other language. It does not say any company is precluded. It does not in fact say it has to be *x* percent of the market or anything like that.

It just says that it has to be more than a relatively small company that does not really provide that competitive alternative for that consumer, that customer, that household at the local level.

The Senator from Alaska may still move to table. I hope not, based upon the language precluding a small company from still coming—a small company could still come and be allowed under the interconnection agreements of 251 to interconnect at the local level. This means I need a little bit more than a small company before the interLATA approval is granted.

Mr. STEVENS. Mr. President, I understand the Senator's intent. I call his attention to the provision of subsection (g) of 251 on page 25:

> A local exchange carrier shall make available any service, facility, or function provided under an interconnection agreement to which it is a party to any other telecommunications carrier that requests such interconnection upon the same terms and conditions as those provided in the agreement.

We interpret that section to mean if there is a small carrier involved and it comes into the area, which means the Bell carrier can then enter long distance, that other carriers can come in easily; as a matter of fact, they would not have to comply with 251.

The problem is that as we see it in rural areas where only a small carrier may seek the interconnection to provide competing local service in the beginning, it means that that small carrier cannot enter this picture until there is a larger carrier that would be able to handle the substantial test of the Senator's amendment. The Senator's amendment would require that you have a carrier capable of providing service to a substantial number of businesses and residential customers. Obviously, the small carrier cannot do that.

One is looking at the test for the Bell companies; the other is looking at the test for entry. We believe the predominant issue in regard to 251 is that there be no requirement other than the minimum compliance with the competitive checklist, as provided in subparagraph (2) of subsection (b) that I read from section 251.

Mr. KERREY. Mr. President, I understand the concern, but the larger concern, I believe, still remains, which is expressed by the findings in the bill and the description of the bill of what it is attempting to do, which is: We want to make sure we have competition before we get into long distance. That is the idea.

Currently, if I am a consumer, a household in Omaha, NE, I have one choice. That is what I have. My telephone company wants to get into long distance. The intent here is before you get into long distance, you get some competitive choice at the local level. If all I have to do is sign an interconnection agreement with one small company before that occurs, that hardly provides the kind of competitive choice, as I understand the intent of the bill.

I understand the Senator's concern about rural carriers, but I do not believe, at least as I read it, that the amendment precludes the possibility of a rural carrier, a smaller carrier interconnecting.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, it is, in our judgment, that the language of the bill, as it stands, provides an incentive to the long-distance companies who are worried about Bell companies' entry into long distance to come forward and use the provisions of section 251 to negotiate the interconnection agreements.

If they do not do that and a small carrier does come forward, it still meets the requirements of this section and, therefore, it is sort of an incentive to the other long distance companies to come forward and get involved in the negotiations regarding section 251, in our judgment.

In any event, it adds a level to the threshold. It increases the minimum requirements that we have associated with compliance with the checklist and, as such, it adds another burden to future competition, which is something that we disagree with the Senator on.

Mr. KERREY. Mr. President, it unquestionably asks for a minimum requirement. That is unquestionably true. I believe if this amendment were adopted, it would be a reasonable substitute for the Department of Justice role. It makes [illegible] competition. The concern [illegible] to be [illegible] most of these [illegible] trying to figure out [illegible] competition

concern really should be is there competitive choice: Do I have in my residence in Omaha, NE, or do I have in my residence in any other area a competitive choice?

It does not insert "no substantial possibility" language. It does not insert any specific language. It just says that it has to be more than a single, small interconnection.

Mr. STEVENS. Mr. President, it is not my desire to limit in any way the Senator's debate on this amendment.

Mr. KERREY. I conclude my debate. Mr. President, I yield the floor.

Mr. STEVENS. Mr. President, again I say what the Senator from Nebraska is looking for is something to increase the effective competition tests that are in this bill. The section we have been debating, section 255(b)(1), sets a minimum requirement for the Bell operating companies to enter into interLATA services. We think that is sufficient, in view of the requirements of the checklist itself.

Unless the Senator wishes to make additional comments, I intend to move to table his amendment, but I will be happy to let him have the last word, if he wishes to do so.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, the last word merely is that the Senator from Alaska is right, I am not worried about the minimum requirement in 255. I think it needs to be strengthened. This amendment does precisely that, it attempts to strengthen the requirements of 255 prior to being given permission for interLATA service.

Mr. STEVENS. The Senators's definition is the difference between us.

I move to table Kerrey amendment No. 1307, and I ask unanimous consent that the vote on this motion to table occur at 2:30 p.m. today and that there be no second-degree amendments in order to the amendment prior to the vote on the motion to table.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. STEVENS. Mr. President, in view of the fact that there is approximately an hour left, I ask unanimous consent to lay this amendment aside until the time established for the vote on my motion to table, in the hope someone might come forward with another amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, how long?

Mr. DORGAN. Ten minutes.

Mr. STEVENS. I have no objection.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Mr. DORGAN. I thank the Chair.

(The remarks of Mr. DORGAN pertaining to the introduction of legislation are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. STEVENS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ABRAHAM). Without objection, it is so ordered.

Mr. STEVENS. The Senator from California has two amendments. One is an amendment to the other. We have no objection to the motion she is going to make to consolidate those amendments.

If she wishes to take it up at this time, we would be happy to do so on the basis of a time agreement, 30 minutes to be divided, 20 minutes on the side of the proponent, 10 minutes over here, with no second-degree or other amendments in order.

We will have a vote on or in relation to the amendment following the vote on the motion to table that has already been agreed to.

I ask unanimous consent that that be the agreement under which the Senator takes up this amendment.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Reserving the right to object, and I shall not object, the distinguished senior Senator from Nebraska and I, Mr. President, have a couple of amendments regarding the Internet that I think we can do in a relatively short period of time.

I wonder if it might be possible for these two Senators to then follow the amendment we just discussed.

Mr. STEVENS. Mr. President, I say to my friend that we have amendments already scheduled to come up for a vote at 2:30. It is our hope we will have this vote on Senator BOXER's amendment right after that, and we would be pleased to take up your amendments following that, if the Senator would like to do so.

Mr. LEAHY. Fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1340 AND AMENDMENT NO. 1354

(Purpose: To preserve the basic tier of cable services)

Mrs. BOXER. Mr. President, I want to thank the Senator from Alaska for his courtesy he extended to this Senator and to the Senator from Michigan, Senator LEVIN.

We are anxious to put our amendment forward. It is very straightforward. I ask that my amendment numbered 1340 be modified by my second-degree amendment, which is also at the desk, amendment No. 1354.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I ask unanimous consent that I yield myself, out of the 20 minutes, 7 minutes.

Mr. President there has been a lot of debate on this bill, the Telecommunications Competition and Deregulation Act of 1995. A lot of it is quite technical. A lot of it is difficult to follow.

I do believe that the amendment that the Senator from Michigan, Senator LEVIN, and I are proposing is quite straightforward.

What we want to do with this amendment is to protect—protect—the people who currently have cable service from losing channels that they have grown used to that are in their basic service.

We are very fearful that because of the changes made in this bill, cable companies will move certain channels out of their basic tier of service, and the public that has grown used to this basic service will now be forced to pay for these channels on a second tier.

For example, there are many viewers that in their basic service get stations like CNN or TNT. What we are fearful of—if we do not pass the Boxer-Levin amendment—is that cable companies will jettison stations like CNN or TNT and tell the customers who have been receiving those programs in their basic service that they will have to pay extra. Now CNN and TNT will go into another tier, and the people who have been watching them will have to now pay more.

It is very straightforward. What we are saying is, if you want to reduce the level of service that you currently have as a cable operator, you first need to get approval from the local franchise authority, which is usually the board of supervisors or the county commissioners or the city council or the mayor.

So we are taking, I think, in this amendment, some commonsense steps. We are saying before the competition fully comes in, and we look forward to that day, before the competition really comes in, for a period of 3 years—we have sunsetted this at 3 years—we want to protect the people who rely on cable. We want to protect them so they do not suddenly find themselves without channels that they have grown to rely on and, in addition, they would have to spend more money to order these channels in another tier of service.

I am very hopeful we will get broad bipartisan support for this amendment. Because, whether Mrs. Smith or Mr. Smith lives in Washington or California or Michigan or South Dakota or Ohio, wherever they may live, they

created it. If the Senator is willing to identify a problem, I am perfectly willing to modify the amendment to make the language clear.

But my intent is to create a situation where we say to a local company, as I think we should by the way, OK, meet the competitive alternative. Go ahead and price your service and meet that competitive alternative. I just want to make certain in a noncompetitive environment the revenue stream does not end up being higher as a consequence of liberating, allowing that competition to be met.

Mr. PRESSLER. I would say before we go into a quorum call that we welcome other amendments and speeches by Senators. The Senate is open for business, and we will conceivably lay this aside if somebody else comes with an amendment. And with that I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that it be in order for me to address the Senate as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

(The remarks of Mr. HELMS pertaining to the submission of S. Res. 133 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. HOLLINGS. Mr. President, while it appears we do not have an immediate amendment, we are reconciling differences, including one on universal services and otherwise.

While we are engaged in that negotiation, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KERREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERREY. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the Kerrey amendment No. 1310.

Mr. KERREY. I ask unanimous consent to withdraw amendment No. 1310.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 1310) was withdrawn.

AMENDMENT NO. 1307

(Purpose: To require more than "an" interconnection agreement prior to long distance entry by a Bell operating company)

Mr. KERREY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Nebraska [Mr. KERREY] proposes an amendment numbered 1307.

Mr. KERREY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 88, strike out line 12 and all that follows through line 20 and insert in lieu thereof the following:

"(b) SPECIFIC INTERLATA INTERCONNECTION REQUIREMENTS—

"(1) IN GENERAL.—A Bell operating company may provide InterLATA services in accordance with this section only if that company has reached interconnection agreements under section 251 with telecommunications carriers that have requested interconnection for the purpose of providing telephone exchange service or exchange access service, including telecommunications carriers capable of providing a substantial number of business and residential customers with telephone exchange or exchange access service. Those agreements shall provide, at a minimum, for interconnection that meets the competitive checklist requirements of paragraph (2).

Mr. KERREY. Mr. President, this is an amendment to section 255 of the Communications Act of 1994. I discussed it with the managers of the bill. I will briefly describe it.

The requirement of the current provision is an attempt to deal with actually section 251 as well by saying that my concern with 255 is that it might allow a local telephone company to get into interLATA after having satisfied in a very minimal fashion the interconnection requirement either of the competitive checklist or of 251. The requirement of the current provision should be satisfied as a local telephone company reached an interconnection agreement with only a single telecommunications carrier, although in many markets a substantial number of carriers will request interconnection. Under the current provision, a Bell company needs only a single entity requesting interconnection without regard to whether the requesting company is weak, undercapitalized, or lacking in other expertise or business planning.

This amendment would ensure that a local telephone company which enters into more than one interconnection agreement, that the agreement includes telecommunications carriers capable of serving a substantial portion of the business in a residential local telephone market. Although it could not ensure that competition will develop, it ensures the interconnection agreements are reached before the long distance entry of the company capable of providing local services to both business and residential customers.

This amendment would remedy a provision in the bill which concerns me, a provision which I believe is very dangerous and susceptible to interpretation in a manner counter to the overall intentions of S. 652. Under the current provision, a Bell operating company could gain entry into the long distance market on the basis of one interconnection agreement with a competitor. It would not matter whether that competitor was weak, undercapitalized, or lacking either expertise on a business plan—that one competitor could facilitate Bell entry into markets which at that time may, or may not, be competitive.

One of the goals of this bill is to open the door, to provide incentives to facilitate local competition. Unless amended, this provision may counter that intended goal, in fact removing incentives for the Bells to reach agreement quickly with their strongest potential competitors. If the Bells think that they can gain entry without having to complete more than one agreement, we are in fact inviting them to game the process. Instead of helping to facilitate local competition, they might gain entry at a time when they still monopolize their local markets, perhaps both stunting the development of local competition and endangering the gains that have been made over the past decade in the increasingly competitive long distance industry.

This amendment would clarify the current provision and move it into line with the bill's overall intentions by ensuring that a BOC enters into more than one interconnection agreement and by ensuring that those agreements are reached with telecommunications carriers capable of serving a substantial portion of the business and residential loop telephone markets. This clarification strengthens the incentives and the conditions for competition to develop.

The requirement in the current provision could be satisfied after a BOC reached an interconnection agreement with only a single telecommunications carrier, although in many markets it is probable that a substantial number of carriers will request interconnection. Under the current provision, a BOC need reach agreement with only a single entity requesting interconnection, without regard to whether the requesting company is weak, undercapitalized, and lacking either expertise or a business plan.

The amendment would ensure that a BOC enters into more than one interconnection agreement and that the agreements include telecommunications carriers capable of serving a substantial portion of the business and residential local telephone markets. Although this does not ensure that competition will develop, it does ensure that interconnection agreements are reached before long distance entry with companies capable of providing local service to a substantial number of both business and residential customers.

Mr. President, it is a pretty straightforward, clarifying amendment. As I have said on a number of occasions, as the managers have as well, this piece of legislation is unprecedented. We are